

**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**

**2008/HP/0388**

*(Civil Jurisdiction)*

**B E T W E E N:**

OSSIE MANGANI ZULU

**AND**

PASCALINE BWALYA MUSONDA



**APPLICANT**

**INTENDED CONTEMNOR**

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the 5<sup>th</sup> September, 2016**

*For the Applicant* : *Dr. O. M. Banda, Messrs O.M. Banda & Company*

*For the Intended Contemnor* : *In Person*

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**RULING**

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**Legislation Referred To:**

1. *Rules of the Supreme Court (1999) Edition*

This application is made *ex parte* for leave to issue committal proceedings for contempt of court pursuant to Order 52 of the Rules of the Supreme Court (1999) Edition.

In support of the application, an affidavit in support was sworn by **OSSIE MANGANI ZULU** on 29<sup>th</sup> April, 2016. He deposes that he commenced litigation in this cause on 22<sup>nd</sup> April, 2008 claiming among others, a declaration that he is the legal and lawful owner of stand no. 16614/1080, Kamwala South, Lusaka. He also deposes that the Court delivered Judgment in his favour 8<sup>th</sup> April, 2011, where the declaration sought was granted.

The affidavit in support discloses that on 30<sup>th</sup> May, 2014, the 1<sup>st</sup> Defendant offered the Applicant's property to the Intended Contemnor, which offer was withdrawn on 4<sup>th</sup> September, 2014, as shown in the exhibits marked "**OMZ1**" and "**OMZ2**" respectively. The deponent also states that on 5<sup>th</sup> August, 2014, some Zambia Police officers of Maxwell Sibongo Police Post in Kamwala South, prevented his staff from carrying out works on the said property, which they alleged to belong to the Intended Contemnor.

The affidavit in support also discloses that the Officer in Charge at the said Police Post summoned the Intended Contemnor and Applicant, where the Intended Contemnor displayed the 1<sup>st</sup> Defendant's letter, signed by the Deputy Director of Legal Services dated 3<sup>rd</sup> May, 2014, offering her the property. The deponent in response avers that he produced the Judgment of the Court and other documents at the Police Post.

The deponent also avers that the Officer in Charge of that Police Post referred the parties to the 1<sup>st</sup> Defendant. He states that when he met the 1<sup>st</sup> Defendant's Advocate, he was told that the 1<sup>st</sup> Defendant had issued a notice of intention to re-enter his property and a notice of entry, which was advertised in the newspaper. Further, that the reason for the 1<sup>st</sup> Defendant's action was attributed to the Applicant's failure to develop the said property. The deponent further avers that the 1<sup>st</sup> Defendant's advocate did not see any fault in that action, given that it had not been challenged by the Applicant.

The affidavit in support reveals that the Applicant showed the Intended Contemnor the Judgment of the Court on 5<sup>th</sup> August, 2014. He alleges that the Alleged Contemnor ignored the Judgment when she began to carry on developments the Applicant's property. Further, that these developments involved the building of a wall fence and delivering building materials.

The deponent discloses that on 8<sup>th</sup> December, 2014 he commenced committal proceedings against the 1<sup>st</sup> Defendant's Town Clerk, Acting Director of Legal Services and the Intended Contemnor which was discontinued through a Consent Order dated 10<sup>th</sup> November, 2015.



In addition, the deponent states that he received information to the effect that the Intended Contemnor was plastering his house on stand no. 16614/1080, Kamwala South, Lusaka. He also avers that on 29<sup>th</sup> March, 2016 he visited his property with his Advocates' Legal Assistant Augustine, where he found the Intended Contemnor's servants working. The Applicant states that he pursued the Intended Contemnor to her house, where upon confrontation she confirmed that she was aware of the Court's Judgment as shown in the exhibit marked "**OMZ2**".

The deponent contends that the Intended Contemnor has continued to disobey the Court's Judgment and she continues to do so with impunity. He also contends that if the Intended Contemnor's impunity is tolerated, it will set a very bad precedent where the Court's decisions will be underrated.

The deponent further states that the grant of his application will not cause any injustice or prejudice to the Intended Contemnor who will be at liberty to defend the committal proceedings. He concludes with a prayer to the Court to grant the application sought.

The Intended Contemnor did not file an affidavit in opposition.

The matter came up for *inter partes* hearing on 24<sup>th</sup> August, 2016, where the Applicant and Intended Contemnor were both in attendance. Learned Counsel for the Plaintiff placed reliance on the affidavit in support filed into Court on 29<sup>th</sup> April, 2016 and reminded the Court that the Intended Contemnor had not filed an affidavit in opposition. Counsel informed the Court that the Intended Contemnor was served summons for leave to commence committal proceedings and the supporting affidavit on 12<sup>th</sup> May, 2016.

The Intended Contemnor in response gave a feeble excuse that she was still trying to engage a lawyer. I was not convinced by her explanation as she was fully aware of the Court's proceedings. My view was that the Intended Contemnor had more than ample time to defend herself. I granted the Applicant leave to commence committal proceedings against the Intended Contemnor and told the parties that I would give my reasons in a written ruling, which I now give.

I have seriously considered this application together with the contents of the affidavit in support and the oral submissions made by Counsel.

From the facts before me, it is common cause that the Applicant was declared legal and lawful owner of stand no.



16614/1080, Kamwala South, Lusaka, and a Judgment was delivered by the Court in his favour 8<sup>th</sup> April, 2011. It is also common cause that on 30<sup>th</sup> May, 2014, the 1<sup>st</sup> Defendant offered the Applicant's property to the Intended Contemnor, a decision it later rescinded on 4<sup>th</sup> September, 2014, as shown in the exhibits marked "**OMZ1**" and "**OMZ2**" respectively.

It is not in dispute that the 1<sup>st</sup> Defendant re-entered the Applicant property, a decision it later overturned by through Consent Order entered with the Applicant on 10<sup>th</sup> November, 2015. It is also not in dispute that the Intended Contemnor has been aware of Court's Judgment since 5<sup>th</sup> August, 2014 when the Applicant approached her at her house. The Intended Contemnor has nevertheless decided to ignore the Court's Judgment and therefore the cause of this application.

Order 52 Rule 2 of the Rules of the Supreme Court which states thus:

***"(1) No application to a Divisional Court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.***

***(2) An application for such leave must be made ex parte to a Divisional Court, except in vacation when it may be made to a judge in chambers, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit,***

**to be filed before the application is made, verifying the facts relied on.**

**(3) The applicant must give notice of the application for leave not later than the preceding day to the Crown Office and must at the same time lodge in that office copies of the statement and affidavit.**

**(4) Where an application for leave under this rule is refused by a judge in chambers, the applicant may make a fresh application for such leave to a Divisional Court....."**

I however wish to point out that the Intended Contemnor was present at the *inter partes* hearing where she was properly identified. Thus the Court dispensed with the rigmarole of Order 52 sub rule 2 which requires an application for committal proceedings to be accompanied by a statement in support. I am fortified by Order 3 Rule 2 of the High Court Rules, which provides that:

**"Subject to any particular rules, the Court or a Judge may, in all causes and matters, make any interlocutory order which it or he considers necessary for doing justice, whether such order has been expressly asked by the person entitled to the benefit of the order or not.** (underlining my own)

On the basis of the affidavit evidence before Court, I find that the Applicant has shown sufficient cause to proceed under the provisions of Order 52 Rule 2 of the Rules of the Supreme Court. I am as a result convinced that no injustice or prejudice will occasion on the Intended Contemnor, who will have the opportunity to be heard at the committal proceedings.

Accordingly, I do hereby grant the Applicant leave to commence committal proceedings against the Intended Contemnor.

Each party should bear its costs.

Leave to appeal is granted.

**Delivered at Lusaka this 5<sup>th</sup> day of September, 2016**

.....*M. Mapani*.....  
Hon. Mrs. Justice M. Mapani-Kawimbe  
**HIGH COURT JUDGE**